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September 9, 2022

VIA ECF

United States District Court
Eastern District of New York
Attn: Hon. Marcia M. Henry, U.S.M.J.
225 Cadman Plaza East
Courtroom 504 North
Brooklyn, NY 11201-1804

Re: Calderon v. Royal Elite Palace Caterers LLC, *et al.*
Case No.: 1:21-cv-6367 (EK) (MMH)
MLLG File No.: 19-2022

Dear Judge Henry:

This office represents individual Defendants Alexandra Hiaeve (“Hiaeve”), Roben Katanov (“Katanov”), and Yuri Yonayev (“Yonayev”) (collectively hereinafter the “Former Owner Defendants”) in the above-referenced case.

The Former Owner Defendants write to respectfully submit that, while they do not object to Plaintiff’s motion for leave to amend the complaint, they reserve the right to respond to the complaint by filing and serving a pre-answer motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (hereinafter referred to as “Rules” or “Rule”).

In that regard, the lack of an objection by the Former Owner Defendants to Plaintiff’s motion for leave to amend the pleadings should not constitute as an admission that amending the pleadings would not be futile, as the Court would analyze that issue under Rule 15 in the same manner as it would under Rule 12. See City Natl. Specialty Co. v. Ashley Furniture Industries, LLC, No.: 21-CIV.-5521 (EK) (LGD), 2022 WL 2918121, at *5 (E.D.N.Y. July 21, 2022); see also Ricciuti v. N.Y.C. Transit Auth., 941 F.2d 119, 123 (2d Cir. 1991).

Accordingly, subject to the foregoing, the Former Owner Defendants have no objection to Plaintiff’s motion for leave to amend the complaint and thank this honorable Court for its time and attention to this case.

Dated: Lake Success, New York
September 9, 2022

Respectfully submitted,

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